



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 25, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1758

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101096.

The Travis County Sheriff's Department (the "sheriff") received a request for twenty-two items regarding Internal Affairs case number 94-134s. You claim that some of the requested information does not exist and that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The sheriff has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The sheriff must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted a copy of a petition in a lawsuit filed by the requestor against the sheriff, the sheriff's department, and the sheriff's civil service commission. Therefore, the sheriff has met the first prong of the section 552.103 test. We have reviewed the documents submitted in both

¹Chapter 552 of the Government Code does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986) at 3.

Exhibits "A" and "B" and conclude that they are related to the subject matter of the pending litigation. Therefore, the sheriff may withhold the requested information under section 552.103 of the Government Code.

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).² In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As we have resolved your request under section 552.103, we need not now address your claimed exceptions under sections 552.101 and 552.108 of the Government Code.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 101096

Enclosures: Submitted documents

cc: Mr. David R. Lindsay, Jr.
(w/o enclosures)

²You state that the sheriff is not withholding from the requestor correspondence received from or sent to the requestor's attorney. We note that there is one letter from the requestor's attorney submitted in Exhibit "B."

³We note that some of the submitted information may be excepted from disclosure under section 552.101 of the Government Code. Therefore, should the sheriff receive a subsequent request for this same information, we suggest that the sheriff re-submit the documents in Exhibit "A" together with his arguments as to why they should be withheld from disclosure under section 552.101.